

FEB 09 2018

**MEETING MINUTES
OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, JUNE 9, 2017
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

MEMBERS

Suzanne Case	Chris Yuen
Thomas Oi	Keone Downing
Stanley Roehrig	Sam "Ohu" Gon

STAFF

Amanda Weston/AG	Alton Miyasaka-DAR
Russell Tsuji-LAND	Kevin Moore-LAND
Ed Underwood/DOBOR	Maria Carnevale-DAR
David Smith-DOFAW	Andrew Choy-PARKS

OTHERS

Walton Hong/D4	Kris LaGuire/J1
Manuel Madera/D11	Ivan Lui-Kwan/D4
Stephanie Pascual/D12-14	Ross Smith/DOT
Jeff Pearson/CWORM	Yvonne Izu/M1
Eric Fujikawa/D1	Peter Savio/D6
Will Okabe/D6	Jerry Gibson/D14
Don Inouye/D6	

The Meeting was called to order by Chair Case at 9:00 am. She conveyed the contested case advisory.

Chair Case said that Items B-1 and D-10 will be withdrawn from the Agenda.

A. MINUTES

1. Approval of March 10, 2017 Minutes.

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted (Gon, Yuen) unanimous.

- ITEM M-1** Approve the recommendations of the Water Security Advisory Group to fund projects that will increase water security in the State of Hawaii:
1. Kaho‘olawe Island Reserve Commission, \$100,000 to improve an existing irrigation system in order to plant 10,000 native plants in a 100-acre Tier II Area in the upper Hakioawa Watershed of Kaho‘olawe;
 2. Lāna‘i Water Company, \$30,000 to convert 210 outdated meters into “smart” meters for single family homes owned by individual homeowners;
 3. Ka‘ala Farm Inc., \$74,293 to pilot test a new method to estimate recharge rate from wetland taro patches; redesign auwai system to be more efficient; and Develop curriculum for visiting school groups;
 4. Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW), \$55,743 for ungulate removal, out planting, weed management, and biocontrol in the Kipahulu Forest Reserve;
 5. Kupu, \$61,952 to develop and pilot a storm water curriculum geared toward 5th grade level, including installing up to 2 rain gardens;
 6. Center for Tomorrow’s Leaders, \$7,500 to install a rainwater catchment at First Assembly of God and Christian Church;
 7. Moloa‘a Irrigation Cooperative, \$26,936 to upgrade agricultural meters to Advanced Metering Analytics, which includes a smartphone/table application that provides real-time information for system operators and customers;
 8. Department of Land and Natural Resources, DoFAW, \$70,000 to expand and maintain vegetative “green” firebreaks that use native plants to reduce fire threat in Wai‘ānae Kai Forest Reserve, by doing clearing, weed control, out planting, and maintenance;
 9. Ko‘olau Mountains Watershed Partnership, \$19,470 to restore 5.1 acres of degraded forest through removal of invasive species and replanting; provide for educational opportunities with nearby Pearl City schools; and establish a 2.0 acre Hawaiian cultural garden;

10. Hoku Nui Maui, LLC, \$100,000 to construct 1,300 feet of an unpaved farm road as a catchment surface for management of storm water runoff and installation of 1.5 million-gallon detention basin and floating wetlands; and
11. The Nature Conservancy, \$68,006 to restore and manage 19 acres of estuarine and wetland habitat in Heeia and conduct community outreach and education.

And:

Declare that projects recommended by the Water Security Advisory Group are exempt from the requirement to prepare an environmental assessment, pursuant to Sections 343-5 and 343-6, Hawaii Revised Statutes and Section 11-200-8 Hawaii Administrative Rules.

Jeffrey Pearson, Deputy Director, Commission on Water Resource Management (CWORM), Kristin Reynolds, Consultant, Lorraine Menor and Fujii present to answer any questions. The submittal in regard to Act 172, passed in 2016 regarding Water Security. It is a two-year pilot program.

Board Discussion

Member Gon disclosed that is he the Senior Scientist and Cultural Advisor for the Nature Conservancy of Hawaii and one of items recommended and approved by the Water Security Advisory Group is a project the Nature Conservancy is putting efforts in Heeia, because of it is one of many projects, and I do not stand to benefit, I will remain in the meeting.

Member Roehrig asked there are any projects on the Big Island. Pearson said "no". Member Roehrig made the comment to make sure all the counties have an opportunity to participate.

Member Downing asked when you started to pick out these people, did we look at completion, or is this to get them started then money runs out. I noticed you have a total cost to run the project. We provide them with seed money to start. Pearson replied, we do not give them all the money at one time. They have to provide an update every six-months and timelines. The goal is to complete the project within 2-years.

Public Testimony

Yvonne Izu from Pulama Lanai supported the project.

Motion

Approved as submitted (Gon, Roehrig) unanimous.

ITEM J-1 Administrative Enforcement Action for:

- A. Violation of Hawaii Administrative Rules, Section 13-231-51: Business Activities Against Mr. Shane Turpin dba Kohala Tours, Mr. Sky K. Mullins, and Mr. William L. Gifford for Engaging in Illegal Commercial Operations from the Pohoiki Boat Ramp, Hawaii Island, and Lands Adjacent Thereto Without a Commercial Use Permit; and
- B. Request for authorization to hold a contested case hearing and for the Chairperson to select a Hearing Officer.

Ed Underwood, Administrator, Boating and Recreation explained the reasons for the violations.

Board Discussion

Member Roehrig said that we are overcharging. We are charging the Boat Captains as well as the Owner

After some discussion, the Board determined that the issue was really that Kohala Tours had two boats, one permitted, and the other not on the permit. DOBOR cited Kohala Tours for using the unpermitted boat on several days. DOBOR allowed the transfer of the permit to the previously unpermitted boat just after these violations, and the transfer of the permit was routinely approved. Kohala Tours had, however, used two boats on three days when their permit only allowed one boat.

Member Yuen suggested fining them \$5,000.00 for each of the (3) violations when they operated two boats in one day, \$15,000.00 max and no fine to the Captains.

Public Testimony

Kris LaGuire representing Shane Turpin asked for a reduced fine to avoid a contested case. Turpin admits to committing the violation. In response to a question, Turpin agreed to be fully responsible for the fines.

Amendment:

The fine to \$15,000.00. No fine to the Captains.

Motion

Approved as amended (Yuen, Gon) unanimous.

10: 38 am. Chair Case needs to step out and Member Yuen is asked to conduct the meeting.

Item D-14 Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach Every Friday From June 9, 2017 to June 8, 2018, Waikīkī, Honolulu, O'ahu, TMK: (1) 2-3-037:021 (Por).

Land Division Administrator Russell Tsuji presented the item to the Board.

This was the annual renewal for the right-of-entry for the Friday night fireworks show at the Hilton.

The Board had previously asked the department to look at two issues: whether an alternative firing site in the area farther from the shoreline could reduce the amount of debris entering the ocean, and the fee. Tsuji said that the submittal described three times that the operator had tried, with poor results, and so the recommendation was to leave the current firing site. On the fee, the BLNR had at one time reduced the fee to \$50, rather than the \$500 charged for one-time fireworks events at other locations. The staff recommendation was to charge ½ the normal fireworks fee, because of the community benefits. The proposed fee would be \$250/event.

Stephanie Pascual testified for Hawai'i Explosives and Pyrotechnics. She said that the company prides itself on its stewardship and tries to respond to complaints. They increased their cleanups at the beach. They worked with their manufacturers to get products with less debris. She referred to hardship from not having the show for the last two weeks.

10:45 am. Chair Case returns to meeting.

Board Discussion

Member Yuen said we will hear from the applicant first.

Public Testimony

Doug Ewald, a Waikiki commercial operator, who runs commercial boat tours that watch the fireworks, spoke to keep the fee as is. Member Downing asked him if he was willing to contribute to an increased fee. Ewald said he would if other businesses who benefit from the show did the same.

Member Roehrig asked Ewald if he thought the increased fee would be a hardship to Blackstone Group, which paid \$12 billion to buy the Hilton. Ewald continued to argue that the Friday night fireworks show benefitted the State and other Waikiki businesses.

Jerry Gibson and Ivan Lui-Kwan, Esq., testified for Hilton. Gibson said that nothing had changed since the Board most recently considered this on Oct. 26, 2016. 3000 members of the public enjoy the show, and many businesses, including dinner cruises and restaurants, do increased business. He claimed that there was about \$2.2 million in additional business a year because of the shows. Hilton also has 500-600 special guests at the show, current and retired military from the Hale Koa.

Gibson read a thank-you letter from Armed Services recreational director ___???.___.

Gibson discussed the caretaking that Hilton does of the Duke Kahanamoku Beach, and also pays the state a total of \$1.3 million/year, including the rent for the pier and sidewalks. Hilton spends \$446,000/yr. for the Friday fireworks shows. Gibson proposed that the state increase the fee for its commercial, non-Friday shows, from \$550/show to \$750/show. Gibson said that the Friday night show has been a tradition for 25 years.

Lui-Kwan thanked Chair Case for meeting with Hilton and trying to find a middle ground. Lui-Kwan argued that H.R.S. §92-28 prohibits a fee or other non-tax revenue from being increased by more than 50% per year. He said the fireworks charge was a fee. The staff report calls it a

fee. Chair Case said that DLNR is not raising the fee, it was just bringing it closer to that charged to others.

Member Downing asked whether Hilton should be charged the normal \$0.10/ft./day that is charged non-fireworks beach uses? Lui-Kwan continued to maintain that this is a new increased fee. Member Roehrig said it was not right that the other fireworks users pay more.

Chair Case commented that we recognize there is a community benefit, but there is also a commercial benefit to Hilton. She commented that there are some people who do not like the fireworks.

Lui-Kwan referred to H.R.S. §237-62 defining non-tax revenues.

Member Yuen said that the fireworks fee was more like rent, it was actually in lieu of the normal \$0.10/ft./day for temporary use of state lands because when that rate was applied to fireworks safety zones it came to an inordinate amount.

Member Roehrig gave an interpretation of H.R.S. §92-28 that he said supported the Chair's position.

Public Testimony

Neil Miyashiro said that he went to fireworks shows as a child, loved it, and started working with Hawaii Pyrotechnics in 2013. He enjoyed seeing how the locals and tourists watch the show.

Rick Egged from the Waikiki Improvement Association said that this was a tremendous community benefit, different because the community knows it is going to happen and relies on it. He referred to the \$446,000 annual cost, and mentioned that a previous Hilton manager had said that it took an effort to get the Hilton corporate office to approve this expense. He thought the increase might put this community benefit at risk.

Member Gon made a motion to approve, but to have the rental be \$100/yr. for this year, total. Member Yuen seconded. He commented that he had been to watch the show, and there were hundreds or thousands of mostly local people getting free entertainment. There are not too many things like that. We have mutually beneficial relation with Hilton on this. Some of the increased business spending makes it way back to the state in GET and boating revenues. He would be happy at keeping it at \$50.

Member Gon said that Hilton has offered to be equitable, and the Friday shows were a special situation. The shows generally benefit the Waikiki community and other residents.

Member Roehrig suggested deferral. He suggested the stakeholders talk with sharing the cost with Hilton.

Member Gon said we needed to vote on the current motion first, but said that we could approve this year's permit at the lower rate and work on it later.

Member Yuen said he wanted at least to vote to extend the permit today, because it was expiring. Members Yuen and Gon voted in favor of the motion. Case, Downing, and Roehrig voted no.

The motion failed.

Member Yuen asked Gibson how many corporate events they had per year. They had 7 in 2016 and 8 in 2017. Chair Case said the issue was not money, but fairness, that it would be inconsistent with other commercial events.

Chair Case asked for another motion. Member Gon moved to approve per staff recommendation. Member Downing seconded.

Member Roehrig commented that this was a good compromise, and if it did not work, Hilton could come back. Member Yuen said he would vote in favor because the alternative was apparently a deferral because of the number of members present, and there was a show tonight that would not go on if there was a deferral. He would prefer the current \$50 fee. Member Gon expressed the same opinion. The vote was unanimously in favor.

Motion

Approved as submitted (Gon/Downing) unanimous.

Chair Case said that we would probably have to break at noon.

The Board decided to hear Items D5 and D-6 together.

Item D-6 Sale of General Lease at Public Auction for Hotel-Resort Purposes; Authorization for Staff to Prepare and Publish a Request for Interest in a Long-Term Disposition of State-Owned Lands, Waiākea, South Hilo, Hawai‘i, Tax Map Key: (3) 2-1-005: 033, 034, 035, & 045.

Russell Tsuji, Land Division Administrator, explained that D-6 had two parts. One, a short-term 3-year lease, the second, a request for interest, in the former “Uncle Billy’s” property in Waiakea.

Board Discussion

Member Yuen suggested that we do D-5, the renewal of the revocable permit for the former Uncle Billy’s, along with D-6, to do all the Uncle Billy’s issues at once. We need to talk about the renewal of the RP first. Member Roehrig agreed.

Tsuji said that the bills in the Legislature that would possibly have affected Banyan Drive had died. The County redevelopment agency is still in effect.

Tsuji said that they were recommending a three-year lease in D-6 because of the uncertainty with the redevelopment plans currently. He said that the building will have to come down sooner rather than later. R.M. Towill was doing a study for DLNR about the demolition costs. The estimate for the actual demolition was \$5 million; they were still studying the permitting costs, but those could add maybe \$2 million.

Chair Case asked for public testimony.

Public Testimony

Wil Okabe, County of Hawaii Managing Director, speaking for Mayor Harry Kim, says the County believes the property cannot be safely occupied for the current hotel uses. He referred to the Erskine Report. The County is currently looking at electrical, fire, and building issues. They had credible reports that at least one party is interested in a long-term lease and so moving forward should not be delayed by a three-year lease. He called for the prompt demolition of the current building. Banyan Drive is a vital part of the economy. Hilo does not have enough facilities for Merry Monarch.

Chair Case commented that if the building is torn down, this becomes a vacant site, and we will need cooperation from the County. It would be optimal to get a developer to help pay for the demolition, otherwise the State might want assistance from the County.

Okabe replied that Hawai'i County is committed to partner with the State on Banyan Drive.

Member Yuen asked if the inspectors will look for immediate hazards. Okabe said the inspectors will go in on Tuesday and will share their findings with the State. Member Roehrig asked the inspectors to look at the friable asbestos in the building.

Peter Savio, representing Savio Development, said that he had to leave for another meeting after lunch, but agreed with what had been said. The building needs to be shut down. The Board decided to wait until he was available after 2:30 to continue hearing from him and questioning him.

George Applegate testified that tourism in Hilo was on a revival. Five major airlines were looking into Hilo, but there was a lack of accommodations. In response to Member Gon's question, he said that he did not like the idea of a short-term lease.

Stu Miller, Vice-President of Development for Tower Development, asked whether the gross income had been submitted to the Board, and whether it was public record. He also asked whether the appraisal was public record. Chair Case said to ask the Land Administrator.

Peter Savio came up again to answer questions. He said he was not interested in a long-term lease. He had suggested previously that the property was not worth the short-term lease because there was too much that needed to be done.

Chair Case said her recollection was that Savio had suggested the short-term. Savio said that was when the redevelopment agency was looking at a park. He did not want a long-term lease because he had bought fee property.

Savio said that he was considering canceling. He was willing to continue operating month-to-month. If the State was planning to close, it could happen in 30-60 days, without a problem. They did not have long-term commitments.

Member Roehrig said he had concerns about the employees. After going there and seeing it, he wanted to shut it down today. He mentioned the friable asbestos. Chair Case said a lot of old buildings have that. Savio said that his company was not making money on the property, and was willing to shut it. They offered to leave the furniture behind if the state found another operator. The property was in bad shape. It was in worst shape than he expected when they took it over.

Member Yuen said that we should wait for the county inspection to decide whether the asbestos is an immediate problem.

Ed Bushor of Tower Development said that they were opening Tower 3 of the Naniloa in 30 days and would be hiring 15-30 employees. They would be happy to interview any of the Uncle Billy's employees.

Item D-5 After-the-Fact Renewal of Revocable Permit No. (RP) S-7879 to Savio HBH Development Company LLC, Permittee, Waiākea, South Hilo, Hawai'i, Tax Map Keys: (3) 2-1-005:033, 034, 035, & 045.

Report on 2016 Appraised Rents for: (a) RP S-7867 to Association of Apartment Owners of Country Club Hawaii, Inc., Permittee, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-1-005:020; (b) RP S- 7879 to Savio HBH Development Company LLC, Permittee, Waiākea, South Hilo, Hawai'i, Tax Map Keys: (3) 2-1-005:033, 034, 035, & 045; and (c) RP S-7892 to Reeds Bay Resort Hotel, Ltd., Permittee, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-1-005:022; Implement New Ground Rent for RP S-7879 to Savio HBH Development Company LLC, Permittee, Waiākea, South Hilo, Hawai'i, Tax Map Keys: (3) 2-1-005:033, 034, 035, & 045.

Continuation of D-5 deferred until Savio returns.

12:10 pm-Break for Lunch

1:45 pm- Back in Session

Item D-1 Partial Withdrawal of 3.20 Acres from Governor's Proclamation dated June 5, 1909; Reset Aside 3.20 Acres to the County of Kauai, Department of Water for Proposed Clearwell Reservoir, Access Road, Water Pipelines, and Related Purposes; Issuance of Management and Construction Right-of-Entry at Kalāheo, Wahiawa Koloa, Kaua'i, Tax Map Key: (4) 2-4-009: portion of 003.

Tsuji- Land, presented the Staff submittal and did not have anything else to add.

Board Discussion

Member Gon clarified that this was in the lower Wahiawa.

Public Testimony- None

Motion

Approved as submitted (Roehrig/Gon) unanimously.

Ross Smith-DOT Airports, presented these agenda items.

Item M-2 Consent to Assignment of a Sublease from Tiare Enterprises, Inc. to BKKM Enterprise Corp., Retail Concession Agreement No. DOT-A-09-0002, DFS Group, L.P., Honolulu International Airport, Tax Map Key: (1) 1-1-03: Portion of 1.

Item M-3 Issuance of a Revocable Permit for a Preferred Hold-Room in the Main Terminal, Hawaiian Airlines, Inc., Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.

Board Discussion

Member Roehrig complained about Hawaiian Airlines service to East Hawai'i, particularly the lack of morning flights. Smith responded that a "preferential holdover" was given to airlines with a minimum number of flights; it is a contractual right. Member Roehrig asked Smith to talk to someone about this.

Item M-4. Issuance of a Revocable Permit for Office Space in the Main Terminal for Airline Operations, Hawaiian Airlines, Inc., Līhu'e Airport, Tax Map Key: (4) 3-5-01: Portion of 8.

Public Testimony- None

Motion

Approved M-2, M-3, M-4 as submitted (Gon, Oi) unanimously.

Continuation of D-5 (Reeds Bay & County Club)

Land Administrator Tsuji reported on the appraised rents for RP's for Uncle Billy's (Pagoda), Country Club and Reed's Bay at Banyan Drive in Hilo. The recommendation was to keep charging just the appraised ground rent and not for the building.

Board Discussion

Member Yuen did not want to take up the Pagoda until later in the day. He noted that this is just a report on the appraisals for Reed's Bay and Country Club.

Don Inouye from Reed's Bay was present to answer questions.

Member Yuen suggested putting an item on the agenda to change to a rent based on land and buildings for both Reed's Bay and Country Club. He said that the primary reason for having Reed's Bay retain ownership of the building was to not make them pay for the demolition, not to lock in the rent being always based on land only.

Tsuji asked if these could be continued for the remainder of their term, four or five months, on the present basis, and Yuen agreed.

Yuen asked how percentage rent would be calculated on Country Club. He asked how Country Club is currently being run. There had been a condominium. Our permittee is the AOA. Tsuji was not sure of the status of the current permittee.

Member Yuen said he is not sure who is collecting the rental for individual units. Is it the association or the former owner? Tsuji said it was the entity that resulted after the legal actions.

Member Yuen said that if we are going to charge 3% we have to be sure that all income goes through one entity so that we collect from all units. Yuen said he suspected that the former condominium owners were still collecting the rents from the units they had owned.

Tsuji said there would be no authority for that to happen. Tsuji repeated that the State only dealt with one entity. Yuen suggested that there was a great deal of money being made by someone at the building. He suggested that we get a professional property manager to manage the building and the State would then get the bulk of the rent. Tsuji said that his understanding was that some of the non-paying former owners have been evicted. Staff had met with the lawyer who was hired to do this.

Member Roehrig said we need to find out whether we were charging a fair amount.

Ed Bushor, representing Tower Development and Grand Naniloa, said that if this had been his building, he would have hired a property manager who would have gotten 5-7% of gross with the rest to him. He leases the building next door, and there are police cars there every day. He suggests that this be looked into to see that the State's interests are maximized.

Member Roehrig asked if we could hire a property manager. Member Yuen said perhaps we could find a property manager who would take an RP and the rent would be negotiable.

Member Roehrig asked Bushor what the problems were. Bushor said that he could not be sure the problems were coming from Country Club but there were problems with people near their driveway and along the oceanfront.

Tsuji said that the prior Governor's Task Force did not want the Country Club to be a residential area. They wanted it in resort. Tsuji said that the property could possibly be set aside to HHFDC as an affordable rental. This is not DLNR's role.

Member Yuen said that per the Erskine Report, this is an interim situation. He thought that the goal was to get a good return to the State at present but the building will probably have to come down in the relatively near future.

Don Inouye said that that appraisal report had an adjustment because of the short-term nature of the RP. He said that if he was charged 3% of gross, it would be about the same as his current appraised rent. He had a gross of about \$1 million last year. He discussed his efforts in the past to get a long-term lease.

Member Roehrig questioned Inouye about asbestos in the Reed's Bay building. Inouye said that he had this checked out years ago and that it passes unless if you disturb it. In response to a comment about finances he said his net was about \$70,000 last year.

Chair Case called up Peter Savio, who had returned to the meeting.

Savio thinks that Uncle Billy's could be shut in a short time because so few rooms were actually rented and visitors could switch their reservations to other hotels.

Member Yuen said that he was sorry that we had come to this point because some months prior he had suggested the three-year public auction lease, and so he cannot criticize staff for their submittal; it is what he suggested. But after looking through Uncle Billy's a few days ago he did not think that it would be responsible to continue renting it out. Member Yuen asked Savio a few questions about an orderly shut-down. Savio said the employees and management company are basically at-will. He said that he would have a public sale of the furniture. In response to a question, Savio said that the concrete from the soffits was dropping because of spalling, and the only way to fix it was to jackhammer out the concrete and replace it.

Ed Bushor of Tower Development and managing partner of the Grand Naniloa said that they wanted to close Uncle Billy's because the sooner it is closed, the sooner the people of Hilo can get a park or a new hotel if that is what the people want. He submitted a proposal that his group would take over a month-to-month permit, pay the appraised value, but get a credit to screen the property, put a mural on the street-side. It would be about \$40-45,000 to screen the whole property. We would interview all employees.

Bushor reported that the Kilauea Tower was done, and the 63 rooms would be online about July 1st. They would be hiring to staff those rooms. He said that they would honor the reservations at Uncle Billy's, and offer free golf. His goal was a long-term lease. I am not here today to ask for that. I had offered in the past to contribute \$250,000 for a tear-down. If it is \$5 million, I do not have that. I would have my construction company do its own analysis of what it would cost. I would commit to study the cost as part of the RP. I'd also see if there was any area that can be saved. Hilton said that they would support a lower-budget, "limited-service" hotel at the site. Bushor indicated that he would like to keep the General Store open.

Member Yuen clarified that Bushor was talking about his company having site control over an Uncle Billy's that was shut down except for possibly the parking lot and General Store. Bushor concurred. Member Yuen also commented that Bushor would not get an advantage from the RP for the long-term lease. Bushor said Hilton would make him screen the shut-down building in any case.

Member Yuen made a motion to acknowledge the after-the-fact RP up to this date, issue a new RP to Savio Development for a month or the first Board meeting in July, they would not take any new reservations, and they would use the month to shut down. In the meantime, the Chair would get a report from the County, and if there were any immediate or emergency safety problems, the Chair would be authorized to close it at her discretion. The proposal from Mr. Bushor has some

advantages for the State but is not on the agenda, so Yuen would like to see it brought to the Board before the end of the Savio RP so there is no gap.

The hotel would be shut but if possible, staff could allow the continued use of the General Store and parking lot. He also asked that the State and Bushor co-operate with Savio in his need to move out furniture and other necessities of the shut-down if it takes more than thirty days. The rent for the time up to the present would be at the current rent; the next month being gratis. Because the first Board meeting in July was July 14, the new Savio RP would run until July 14. The new RP would be at the old rent.

Savio agreed with the recommendation. He commented that the Gift Shop building was in good shape. That wing can be saved. The wing going straight to the ocean, the lobby, and the restaurant were disasters.

Chair Case and Tsuji clarified that the RP would be extended to July 14 at no rent. The time would be used to shut down the operations. Member Yuen said that the new RP after July 14 could incorporate the offsets against rent that Bushor discussed but the cost of a demolition study could not be part of the offset.

Bushor asked if the Board could authorize the RP now he could get his construction crew to start on the fence. They were going to finish the current job July 1.

Member Yuen responded that they could not make that decision today because it was not on the agenda. Chair Case said that they could authorize the fence with Savio if Savio wanted to work it out. Member Roehrig said that we should not complicate this now.

Tsuji clarified that the proposed rent for the RP starting July 14th would be at the land value only.

Amendment:

Opposed the portion of the submittal that sought approval to auction a short-term (3-Year) lease.

MOTION

Approved the portion of the submittal authorizing Staff to issue a Request for Interest in a Long-Term Disposition

Member Roehrig seconded the motion as amended. It passed unanimously.

Item D-2 Approval of 25-Year Term Extension of General Lease No. S-4575, Fran Shizuno Miyake, Norman David Thompson, and Karen Edith Thompson, Lessee, Nāwiliwili Harbor Lots, Lihu'e, Kaua'i, Tax Map Key: (4) 3-2-004:014.

Russell Tsuji presented the agenda item. He said in response to Member Downing's questions made offline there were no subtenants. He made a correction to the amount of improvements. In page 3, it says \$228,035; it should be \$272,916. We have done a number of these extensions.

Public Testimony

Walton Hong, Esq., representing the tenant, said that there was a sub-tenant. The Board had approved this. They wanted to put on a new roof and it cannot be justified with a lease running out in November.

Board Discussion-None

Motion

Approved as submitted (Gon, Downing) unanimously.

Recess

Item D-6 continued

Member Gon mentioned we needed to finish D-6. Member Yuen said we had not discussed it yet as D-6, was related to D-5.

Bushor of Tower Development said the community was seeking a long-term process.

Member Yuen made a motion to disapprove the public auction of a three-year lease, and to approve a request for interest in a long-term disposition of the property. Member Gon seconded the motion; it passed unanimously.

ITEM D-11 Amend Prior Board Action dated January 11, 2013, item D-14, *Grant of Term, Non-Exclusive Easement to West Coast Roofing, Inc. for Seawall Purposes; Assess Administrative Costs of \$200, Makahā, Wai‘ānae, Oahu, Tax Map Key: (1) 8-4-005: seaward of 002.*

This Amendment Pertains to Additional Easement Area and Consideration.

Tsuji presented Item D-11. This amended a prior Board action, allowing a non-exclusive easement for seawall purposes in Waianae. Member Yuen said, for the record, that there was adequate evidence that this is a seawall that was legal when built but became an encroachment because of movement of the shoreline.

Public Testimony

Manuel Medeiros of West Coast Roofing said, that the encroachment was originally 131 square feet, but now there was an additional 190 square feet. The State now wanted an additional \$4351. He said after looking at it yesterday there was only 106 square feet of the wall exposed. He said he was required to get a \$1 million insurance policy for the land outside the seawall, which he cannot control. He did not think it was fair and he was told he could come to the hearing and voice his concerns.

Tsuji asked if he was talking about a footing. He pointed to a portion of the report which said that during a high wave event the entire length of the seawall was exposed. Medeiros asked

when should the shoreline be measured. Tsuji said that under the Supreme Court rulings, it is measured at the highest wash of the waves, except for storm or tsunami waves.

Board Discussion

Chair Case mentioned this is a challenging situation and we have legislation pending, but we have laws we have to follow. Medeiros complained that even though he bought the property with a legal wall, and the beach was not really changing in this area, he was having to pay for the encroachment.

Member Roehrig asked Medeiros if the beach changed seasonally. Medeiros said yes, sand was lost in the winter then came back in the summer. Member Roehrig said we have to treat everyone the same. Member Roehrig asked if staff was continually checking the shoreline. Tsuji said no, normally we find out about this kind of situation when there is a shoreline setback application. Member Downing asked if they could raise the wall. Tsuji said that was a County issue.

Member Yuen said they would need a shoreline setback variance. Member Downing said that if they built the wall three feet higher they would not have water going into the yard and the shoreline would not be mauka of the wall.

A member commented they feel for the landowner. Chair Case said that she felt for the landowner too, but the department could not get a bill passed where the landowner would not have to pay in this situation. Tsuji said that they were not able to get a hearing.

Member Roehrig said that he would vote no, to send a message to the Legislature that they cannot put all this stuff on the landowner. Tsuji said that the legislators thought our bill encourages shoreline wall construction. Member Roehrig said we should make a team effort with the board members to convince the legislature. Chair Case said that whatever the law is, we have to apply it across the board.

Motion

Approved as submitted (Gon, Downing) Roehrig opposed.

ITEM K-1 Conservation District Use Application (CDUA) OA-3784 for the Royal Hawaiian Groin Improvement Project, by the Department of Land and Natural Resources, Office of Conservation and Coastal Lands, at Waikīkī, Island of O‘ahu, Seaward of Tax Map Keys: (1) 2-6-002:005 and (1) 2-6-002:006

Tiger Mills of OCCL presented agenda item K-1. The matter had been deferred at the April 28, 2017 meeting. OCCL stood by its previous recommendation. The Board had asked for additional information about repairing and restoring the existing groin, the impact of T-head groins, and the potential attractive nuisance aspects of the proposed groin.

Public Testimony

Scott Sullivan of Sea Engineering, consultants to DLNR, testified. He came to answer specific questions from the previous meeting. He showed a power point presentation. The existing groin stabilizes about 1700 feet of Waikiki, which he called the Royal Hawaiian sector of Waikiki.

The first 100' of the existing groin, starting at the seawall, is semi-intact and semi-functional. After that it becomes submerged and progressively more broken. It becomes scattered blocks scattered on the seafloor. Submerged structures are not effective. In Kona conditions, the groin is very ineffective. Sand gets stripped away, creating sinkholes, which can be pretty big.

Member Downing asked how many sinkholes they've had. Sullivan was not certain but it happened after the sand was replaced in 2012. DLNR installed large sandbags on the Ewa side of the wall to shore it up. Downing asked if this only happened once. Sullivan said he was not sure but because there was not much sand there now there was not much opportunity for sinkholes.

The sandbags were put in when they thought the new groin project would make faster progress. Sullivan showed pictures of the undermining of the existing groin. If the groin collapsed, the beach would be quickly and permanently lost.

Sullivan said they contracted with a Marine Engineer. The design criteria would be a hurricane-type event. Member Roehrig said the existing groin has survived a number of tidal waves and it is still there. Sullivan defended the engineer's judgment and said we were lucky the existing groin was still standing. Member Roehrig asked why the engineer did not do a computer study. Sullivan said that this was a licensed engineer who did the analysis he thought necessary.

Member Roehrig said that his recommendation the last time was to get an engineer to try to design a concrete barrier that would work. Sullivan said that if the desire was a concrete wall, they would have to add five feet of concrete on either side. It would not be long enough to maintain the beach at the 2012 position. The wall would be stable, but it would not stabilize the beach.

Sullivan said that when the wall was originally built, it had rock buttresses. He repeated the reasons for a T-head design. The proposed groin is 180' long but it extends 160' from the existing seawall. It is similar to some other groins in Waikiki.

Chair Case asked Sullivan to deal specifically with the questions raised the last time. He said that the existing groin could not be repaired. Mills said that the Board had asked if the existing groin could be repaired, more information about T-head groins, and the attractive nuisance.

Regarding the "attractive nuisance", Sullivan said that he walked the shoreline at the recent high tide and south swell, along Waikiki. There were many people in the water, clambering on every structure all over the beach having fun. He thinks people will do what they want.

Member Roehrig said his concern was that this groin was where he learned how to surf and it would be right in the middle of that. Chair Case said that according to testimony, that spot was a bit to the east of the T-groin. An unidentified person said that the Baby Royals surf spot was farther out.

Member Downing asked if the existing wall could be grouted or filled. Sullivan said it was the engineer's opinion that that would not work.

In response to questions, Sullivan did not think that removing some of the older remnant concrete-filled bags, which had been done previously, made the sand erosion problem worse because he did not think they were effective.

Chair Case asked about the 2012 project. Sullivan said that they monitored that for 2.5 years and about 25% of the sand had been lost. Chair Case asked about the big picture in Waikiki.

Sullivan said DLNR had contracted with his firm for a longer-term strategy for Waikiki Beach. Chair Case asked if there were other engineering solutions, rather than a T-groin. Sullivan said that DLNR had hired Dr. Kevin Bodge who was asked primarily to look at the Kuhio Beach crib wall but secondarily to look at a larger area. He proposed numerous T-head groins. Dr. Franz Gerritsen had done a plan in the 1970's proposing T-head groins. Our firm stays up with current science. Sullivan described the objectives of the project.

Member Downing read from a 2012 report from Sullivan which said that the old Kuhio Beach remnant groins referred to earlier should be removed. Member Downing said that since they were removed erosion has gotten worse. The report said that the best method to pump sand was a dry sand pump. That was a failure; the pump had to be removed and the sand had to be trucked.

Chris Conger and Dolan Ebersole had written in 2011 that the beach had reached a dynamic equilibrium. Downing's understanding of that was that there was only so much sand that could be retained on the beach no matter how much was put on. He referred to a prior report by Sullivan that recommended a bigger groin at the Royal Hawaiian than that proposed today. Member Downing mentioned an earlier company that designed curved seawalls. He said that this needs to have another analysis.

Public Testimony

Peter Carlisle, former Prosecuting Attorney, and Mayor, testified that he hoped the BLNR would accept the recommendation of the Waikiki Beach Special Improvement Association and replace the existing groin to prevent failure and loss of this section of the beach. He surfs Pop's, which is right outside the Royal Hawaiian groin area. He said most people now learn to surf at Canoes. He thinks the current groin is an accident waiting to happen. He favored Option 1.

Member Roehrig asked about the rail project. Carlisle said it would be done, it would be a boon to people on the west side, and he would always support it

Rick Egged spoke, representing the Waikiki Beach Special Improvement Association, spoke supporting the current staff recommendation. They had supported a slightly different option earlier. They are committed to providing \$750,000 in support.

Dolan Ebersole of the UH Sea Grant Program and Waikiki Beach Management Coordinator testified that the current groin is in poor shape, structurally and functionally. The last three winters we had to close the Royal Hawaiian public access. The sand has not returned. The Kuhio end is heavily scoured. The Royal Hawaiian end has not recovered as it normally would.

Member Yuen asked him to evaluate a sloping rubble-sided T-groin vs. a vertical curving concrete wall. Ebersole said that there has been lots of research and that most structures in Waikiki were rubble T-groins. Ebersole was not a coastal engineer but that his experience was that most modern sand retaining structures were sloping rubble T-groins.

Andrew Wycklendt Hawaii Shore and Beach Preservation Association referred to written testimony submitted yesterday, said that the current groin was in poor condition, and that standard engineering practice was used to evaluate the groin and came up with this alternative. The groin should be repaired or replaced.

Member Gon moved to accept the staff recommendation. Member Yuen seconded, proposing an amendment. He did not mean any criticism of our Consultant, but some members of the Board had expressed skepticism, so the amendment would be that prior to implementing the project, the Chairperson would seek a second opinion that a T-head groin was an appropriate design to reduce erosion at this site, that the sloping rock configuration is superior to the vertical concrete wall, and the Chair would contract with a qualified engineer to provide this second opinion.

Chair Case said that it should be whether this design meets the goals of the project, which were to maintain the 1985 beach line width and protect the hotels. Members Gon and Yuen agreed to this wording. If the second opinion was positive, it would not be brought back to the Board. If it was negative, the project would be reconsidered.

Member Roehrig agreed and would trust the judgment of the Chair. Member Yuen again said that he meant no disrespect or suspicion of the engineer DLNR had hired; it was his expectation that it would corroborate the current engineer's opinion, but this was an important project, and if there was a problem we should know about it. Member Gon agreed.

Motion passed unanimously, as amended.

Member Yuen asked whether the Chair had the budget to do it. She confirmed the State could do it. Rick Egged committed to pay half of the study. Chair Case said they would try to do this expeditiously.

Amendment Clarified:

Prior to implementing the project, the Chairperson will seek a 2nd coastal engineering opinion on whether the proposed T-head groin is an appropriate design that meets the goals of the project. If the Chair upon review of the second opinion determines it is, the project shall move forward. If the Chair determines it does not, this matter shall be brought ack to the Board for reconsideration.

The objectives of the project are:

- 1. Maintain the approximate beach width of the 2012 Waikiki Beach Maintenance Project so that it can provide it is intended recreational and aesthetic benefits;***

2. ***Facilitate lateral access along the shoreline; and***
3. ***Provide a first line of defense for the backshore area by maintaining a sufficiently wide beach.***

Member Yuen asked whether the Chair had the budget to do it. She confirmed the State could do it. Rick Egged, Waikiki Beach Special Improvement committed to pay \$750,000 towards the study. Chair Case said they would try to do this expeditiously.

Motion

Approved as amended (Yuen, Gon) unanimously.

ITEM J-2 Authorize Public Auction of a Lease for Maritime Related Purposes, situated on Nāwiliwili Small Boat Harbor, Island of Kaua‘i, Hawai‘i, Tax Map Key: (4) 3-2-03:043 (Portion).

Dana Yoshimura of DOBOR presented J-2, authorization to sell a 30-year lease at public auction at Nāwiliwili. This is currently leased to Nawiliwili Yacht Club. It expired, but the Board had approved a one-year holdover. This is not a subdivided lot currently, and the lessee may be required to go through county subdivision.

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted (Gon, Downing) unanimously.

ITEM J-3 Issuance of a Revocable Permit to Honolulu Transpac, Ltd., for Support Areas and Mooring Sites, for the 2017 Transpacific Yacht Race from Los Angeles, California to Honolulu, Hawai‘i, situated at the Ala Wai Small Boat Harbor, Tax Map Key: (1) 2-3-037:012 (portion).

Yoshimura presented J-3.

Board Discussion

Member Gon asked if this was the same as the permits used in the past. The fee had changed to considerably more than they had been paying.

Public Testimony-None

Motion

Approved as submitted (Gon, Downing) unanimously.

Chair Case stepped out. Member Yuen took over for the Chair.

Kevin Moore, Land Division, was present to answer questions on Items D-3, 4, 7, 8, 9, 12 and 13.

ITEM D-3 Issuance of Right-of-Entry Permit onto Unencumbered State Beach Land to Essex House Condominium Corporation dba Kauai Marriott Resort & Beach Club for Beach Cleaning and Maintenance, Stream Mouth Maintenance, Storm Maintenance, and Leveling of Recreational Areas; Kalāpaki Beach, Kalapākī, Līhue, Kaua‘i, Tax Map Key: (4) 3-5-002: seaward of 002.

ITEM D-4 Quitclaim Sale of Remnant (abandoned road right-of-way) to Dennis D. Raymond and Colleen L. Raymond; Issuance of Right-of-Entry for Access Purposes, Ka‘apuna & Moloa‘a Hui, Kawaihau, Kaua‘i, Tax Map Key: (4) 4-9-003: Road, also designated as Tax Map Key: (4) 4-9-008:999.

Board Discussion

Acting Chair Yuen asked, for D-4, why the submittal said it had no access, but it abuts Kuhio Hwy. Was there a no-access condition on Kuhio Hwy.? Moore was not certain. Yuen said he would assume this had been thought through.

ITEM D-7 Amend Prior Board Action of December 9, 2016, Item D-10, *Issuance of License Agreements by the Board of Land and Natural Resources to the Department of Defense for Installation, Operation and Maintenance of Civil Defense Warning Sirens on Land under the Direct Management of the Department of Land and Natural Resources, Statewide, at the following TMK Nos:*

(1) 1-5-041:006, (1) 8-2-001:001, (1) 4-6-005:009, (1) 5-6-001:024, (1) 5-3-011:009, (1) 4-1-015:016, (1) 2-3-037:012, (2) 2-1-006:030, (2) 1-3-005:009, (2) 1-4-007:009, (3) 6-6-002:005, (3) 1-3-007:026, and (3) 8-9-004:008

The Purpose of the Amendment is to correct the Tax Map Key reference for the Department of Defense (DOD) siren site at Hapuna Beach Park, Siren ID No. HA404 from TMK: (3) 6-6-002:005 to TMK: (3) 6-6-002:035.

Chair Case returned to the meeting,

ITEM D-8 Issuance of a Right-of-Entry Permit to Neal B. Schneider for Landscape and Maintenance on Portion of Government Beach Reserve for Clean-up, Sand Dune Restoration, and Native Plant Propagation Purposes, Waiohuli, Kīhei, Maui, Tax Map Key: (2) 3-9-009: 011 and 034 por.

Board Discussion

Downing and Yuen commented that staff had done a good job making sure that obstructions to public access would be removed

ITEM D-9 Rescind Board Action of April 8, 1983, Item F-3, *Direct Sale of Perpetual, Non-Exclusive Easement for Revetment Purposes Covering Portion of Government Beach Reserve*, and Grant of 55-Year Term, Non-Exclusive Easement to New Owners: Robin M. Kean and Jennifer Downs Kean, Trustees of the Robin M. Kean Revocable Living Trust dated October 1, 2015, and Jennifer Downs Kean and Robin M. Kean, Trustees of the Jennifer Downs Kean Revocable Living Trust dated October 1, 2015; for Resolution of Seawall and Rock Revetment Encroachment Purposes; Issuance of Immediate Management Right-of-Entry Pending Issuance of Easement, Waiohuli-Keōkea Homesteads, Kīhei, Maui, Tax Map Key: (2) 3-9-012: seaward of 003.

ITEM D-12 Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display on Encumbered State lands off Ko Olina Beach on July 4, 2017, Hono‘uli‘uli, ‘Ewa, O‘ahu, Tax Map Key: (1) 9-1-057: seaward of 006.

Board Discussion

Member Downing said that it had to be amended because there was a second firing site; the fee had to be doubled.

Amendment:

Increase fee to \$1,100 because of the second launch site.

ITEM D-13 After-the-Fact Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display on Encumbered State lands off Ko ‘Olina Beach on May 31, 2017, Honouliuli, ‘Ewa, O‘ahu, Tax Map Key: (1) 9-1-057: seaward of 006.

Board Discussion

Member Downing noted that this request was after-the-fact because the request from the applicant came in late. He suggested a late fee for these. Moore said that Land Division wanted a late fee but the AG’s said we would need a rule change. Member Yuen criticized the advice, saying that the \$500 was not in the rules either. Moore said that that was okay because it was like rent but the AG’s advice was the late fee needed a rule change. Member Downing suggested an after-the-fact rental increase.

Public Testimony-None

Motion

Member Roehrig **moved** to **approve** D-3, 4,7, 8, 9, 13, and D-12 *with the amendment*. Member Gon **second** the motion. Unanimous.

Motion to adjourn (Gon, Oi) unanimous.

There being no further business, Chairperson Suzanne Case adjourned the meeting at 5:30 p.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and available for review. Certain Items on the agenda were taken out of sequence to accommodate applicants or interest parties present.

Respectfully submitted,



Darlene S. Ferreira
Land Board Secretary

Approved for submittal:



Suzanne D. Case
Chairperson
Department of Land & Natural Resources